

A **Ling Beng Hui v
Tengku Shahrani bin Tengku Badar Shah & Ors**

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO B-02-558
OF 1997

B NH CHAN, ABDUL MALEK AHMAD AND MOKHTAR SIDIN JJCA
10 JUNE 1998

C *Land Law — Acquisition of land — Compensation — Who is entitled to compensation
— Sale and purchase agreements between parties — Compulsory acquisition by state
government — Dispute as to actual area acquired — Whether compensation should go
to the appellant or respondents*

D The parties had entered into two sale and purchase agreements. The
first agreement was rescinded on the date the second agreement was
signed. Section 1.04 of the first agreement stated that the Selangor
State Government had agreed to alienate to Perniagaan Sanjung Sdn
Bhd ('the company'), a piece of vacant land of approximately
17.9 acres ('the land') solely for industrial use, being part of three
adjoining pieces of land. Under that agreement, the land is subdivided
in accordance with the annexed sketch layout plan comprising part
A, part B and part C. The second agreement had an almost similar
section 1.04 which stated that the company is the registered proprietor
of the land measuring approximately 17.9 acres which shall be
subdivided in accordance with the annexed sketch layout plan
comprising part A and part B. The annexed sketch layout plans in
both agreements refer to the same area and location except that
part A and part B of the sketch layout plan in the first agreement has
been merged into part A of the sketch layout plan in the second
agreement. Consequently, part C of the sketch layout plan in the first
agreement has now become part B of the sketch layout plan in the
second agreement.

G The Selangor State Government declared the acquisition of land
under part A for the Shah Alam Expressway Project where the
appellant will be paid compensation amounting to RM2.792m. The
Selangor State Government had earlier acquired 0.533 acres more
than part C of the sketch layout plan of the first agreement
corresponding to part B of the sketch layout plan in the second
agreement.

H The respondents argued that there was no evidence to show that
the whole of part B in the sketch layout plan in the second agreement
had been acquired. The respondents maintained that as long as the
acquisition was for a highway, it must belong to them and the
compensation should be paid to them. The appeal therefore turned
on the construction and effect of the second agreement.

I

Held, allowing the appeal:

Although the words 'approximately' and 'about' were used in the two layout plans, the figures tallied and there was no confusion as to the areas designated. Further, having been annexed to the two agreements and referred to in the affidavits, it was part of the evidence. Since the area in part C in the sketch layout plan in the first agreement which become part B in the sketch layout plan in the second agreement had been acquired earlier, the area acquired subsequently must be in part A in the sketch layout plan in the second agreement which was originally parts A and B in the sketch layout plan in the first agreement. Since the compensation to be given to the respondents is only for part B in the sketch layout plan to the second agreement, it need not be handed over to the respondents as the acquisition is clearly for part A of the sketch layout plan in the second agreement which should rightly go to the appellant (see pp 187I and 188A-C).

[Bahasa Malaysia summary]

Pihak-pihak telah mengikat dua perjanjian jual beli. Perjanjian pertama telah dibatalkan pada tarikh perjanjian kedua ditandatangani. Seksyen 1.04 perjanjian pertama menyatakan bahawa Kerajaan Negeri Selangor telah bersetuju memberi milik sebidang tanah kosong seluas kira-kira 17.9 ekar ('tanah tersebut') kepada Perniagaan Sanjung Sdn Bhd ('syarikat tersebut'), semata-mata untuk penggunaan perindustrian, yang merupakan sebahagian daripada tiga bidang tanah yang bersempadanan. Di bawah perjanjian tersebut, tanah tersebut dipecah bahagi menurut pelan susun atur lakaran yang dilampirkan yang terdiri daripada bahagian A, bahagian B dan bahagian C. Perjanjian kedua mempunyai seksyen 1.04 yang hampir serupa yang menyatakan bahawa syarikat tersebut adalah tuan punya berdaftar tanah tersebut seluas kira-kira 17.9 ekar yang hendaklah dipecah bahagi menurut pelan susun atur lakaran yang dilampirkan yang terdiri daripada bahagian A dan bahagian B. Pelan-pelan susun atur lakaran yang dilampirkan dalam kedua-dua perjanjian merujuk kepada kawasan dan lokasi yang sama melainkan bahawa bahagian A dan bahagian B pelan susun atur lakaran perjanjian pertama telah dicantumkan dalam bahagian A pelan susun atur lakaran perjanjian kedua. Akibatnya, bahagian C pelan susun atur lakaran perjanjian pertama kini telah menjadi bahagian B pelan susun atur lakaran dalam perjanjian kedua.

Kerajaan Negeri Selangor mengisytiharkan pengambilan tanah di bawah bahagian A untuk Projek Lebuhraya Shah Alam di mana perayu akan dibayar pampasan berjumlah RM2.792 juta. Kerajaan Negeri Selangor terlebih dahulu telah mengambil 0.533 ekar lebih daripada bahagian C pelan susun atur lakaran perjanjian pertama yang sepadan dengan bahagian B pelan susun atur lakaran perjanjian kedua.

- A** Penentang-penentang menghujahkan bahawa tiada keterangan untuk menunjukkan bahawa keseluruhan bahagian B pelan susun atur lakaran perjanjian kedua telah diambil. Penentang mempertahankan bahawa selagi pengambilan adalah untuk sebuah lebuh raya, ia mestilah dimiliki oleh mereka dan pampasan haruslah dibayar kepada mereka. Maka rayuan bergantung pada tafsiran dan kesan perjanjian kedua.
- B**

Diputuskan, membenarkan rayuan:

- C** Walaupun perkataan-perkataan 'approximately' dan 'about' digunakan dalam dua pelan susun atur, angka-angka adalah selaras dan tidak terdapat kekeliruan mengenai kawasan yang ditandakan. Seterusnya, setelah dilampirkan kepada dua perjanjian itu dan dirujuk dalam affidavit-afidavit, ia merupakan sebahagian daripada keterangan. Oleh kerana kawasan bahagian C dalam pelan susun atur lakaran dalam perjanjian pertama yang menjadi bahagian B pelan susun atur lakaran perjanjian kedua telah diperolehi lebih awal, kawasan yang diperolehi selepas itu mestilah dalam bahagian A pelan susun atur lakaran perjanjian kedua yang pada asalnya bahagian-bahagian A dan B pelan susun atur lakaran dalam perjanjian pertama. Oleh kerana pampasan untuk diberikan kepada penentang-penentang hanyalah untuk bahagian B dalam pelan susun atur lakaran perjanjian kedua, ia tidak perlu diserahkan kepada penentang-penentang kerana pengambilan jelas adalah untuk bahagian A pelan susun atur lakaran perjanjian kedua yang dengan betulnya harus diserahkan kepada perayu (lihat ms 187I dan 188A-C).]
- D**
- E**

F **Notes**

For cases on compensation, see 8 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1210–1223.

G **Case referred to**

Wigginton & Milner Ltd v Winster Engineering Ltd [1978] 3 All ER 436 (refd)

Appeal from: Originating Summons No MT4–24–276 of 1997 (High Court, Shah Alam)

- H** *Cyrus V Das* (Steven Thiru with him) (*Shook Lin & Bok*) for the appellant.
Lim Kean Chye (Edwin Lim with him) (*Lim Kean Siew & Co*) for the respondents.

- I** **Abdul Malek Ahmad JCA** (delivering judgment of the court): The parties had entered into two sale and purchase agreements. The first agreement on 23 December 1993 was rescinded on 12 December 1994 on which date the second agreement was signed.

What concerns us in particular is section 1.04 of the first agreement where, under the heading 'The company's assets', it is stated that the Selangor State Government has agreed to alienate to Perniagaan Sanjung Sdn Bhd (hereinafter 'the company'), a piece of vacant land of approximately 17.9 acres (hereinafter 'the said land') solely for industrial use, being part of three adjoining pieces of land currently known as Lots 2716, 29816 and 2629 in the mukim and daerah of Petaling in the state of Selangor as delineated in green in the annexed location plan. Under that agreement, the said land is subdivided in accordance with the annexed sketch layout plan comprising part A shaded in red, part B shaded in blue, and part C shaded in yellow, totalling approximately 4.37 acres, 6.44 acres and 7.09 acres respectively.

The second agreement had an almost similar section 1.04 except that this time it is stated that the company is the registered proprietor of all that piece of vacant land held under an issue document of title HS(D) 86220 PP 24517 in the mukim of Petaling, district of Petaling in the state of Selangor measuring approximately 17.9 acres which shall be subdivided in accordance with the annexed sketch layout plan comprising part A shaded in red and part B shaded in blue, measuring 10.81 acres and 7.09 acres respectively.

Comparing the annexed sketch layout plans in the two agreements, it is clear and it cannot be disputed that they refer to the same area and location except that the 4.37 acres in part A and the 6.44 acres in part B of the sketch layout plan in the first agreement has been merged into the 10.81 acres in part A of the sketch layout plan in the second agreement. Consequently, the 7.09 acres in part C of the sketch layout plan in the first agreement has now become part B of the sketch layout plan in the second agreement.

Learned counsel for the appellant, in his usual frank and fluent fashion, started off his submissions by saying that the whole appeal turned on the construction and effect of section 13.02 of the second agreement which reads:

Government acquisition

- (a) The vendors hereby represent and warrant that they have knowledge of an intended compulsory acquisition by the relevant authorities of part B of the said land under the provisions of the Land Acquisition Act 1966 or any statutory enactment.
- (b) In the event that part B of the said land is compulsorily acquired by the government, the purchaser shall, upon the expiry of [twenty one (21) days] after the receipt by the company of the compensation money (hereinafter referred to as 'the compensation money') from the government in connection with such compulsory acquisition of part B of the said land, pay to the vendors an amount equal to the compensation money received by the company after deducting any tax as may be payable by the company in connection with such acquisition by the government. A certificate signed by one of the directors of the company as to the amount of compensation money less the tax arising therefrom payable to the vendors shall be final and binding upon the vendors.

A He referred to Selangor State Government Gazette No 1528 published on 26 October 1995 which declared the acquisition of 1.749 acres of HS (D) 86220 for the Shah Alam Expressway Project package A where the compensation amounted to RM2.792m. He added that it cannot be disputed that this is due to the appellant as the area acquired would fall under part A of the sketch layout plan in the second agreement.

B To support his contention that the sketch layout plan annexed and referred to in certain clauses of the agreement is considered part of the agreement, he cited *Wigginton & Milner Ltd v Winster Engineering Ltd* [1978] 3 All ER 436 where the Court of Appeal in England held that although a plan annexed to a conveyance and described as 'for the purpose of identification only' could not contradict anything which was explicit in the description of the parcels, it could be used to elucidate the identity of the property which the conveyance was intended to convey where it was not made explicit in the description of the parcels. In that case, the true identity of the land which the 1921 conveyance was intended to convey could not be ascertained from the description of the parcels alone. It was clear from the way in which the schedule and the plan were linked in the primary description of the parcels in the body of the conveyance that the numbers in the schedule had to be read as referring to the corresponding numbers on the conveyance plan, where they were all to be found and where they served as a key to relate the description contained in the schedule with that shown on the face of the plan, and further it was clear that the plan was the only means of discovering what the parties intended to be the boundary between the land comprised in lot 795 and the land excluded from lot 795 but which nonetheless formed part of OS 317 on the 1915 ordinance survey map. It followed that, in the circumstances, the court could refer to the plan in order to determine the extent of the land conveyed and therefore, was entitled to hold that on the true construction of the 1921 conveyance, the disputed land was excluded from it and that it therefore passed to the plaintiffs under the 1972 conveyance.

E His argument is fortified, he said, by the earlier acquisition for the same project by the Selangor State Government in their Gazette No 325 published on 14 April 1994 for 7.623 acres which is 0.533 acres more than part C of the sketch layout plan of the first agreement corresponding to part B of the sketch layout plan in the second agreement. As such, the subsequent acquisition in the 25 October 1995 gazette notification must be for part A in the sketch layout plan in the second agreement.

G Learned counsel for the respondents, in his trademark laidback manner, argued that there was no evidence to show that the whole of part B in the sketch layout plan in the second agreement had been acquired. He insisted that one cannot look at the acreage as the plan was merely a sketch layout plan and not a survey plan and all the areas stated were 'approximately' or 'about'. He maintained that as long as the acquisition was for a highway, it must belong to the respondents.

H We had compared the two sketch layout plans and could only conclude that although they were described as such and the words 'approximately' and 'about' were used, the figures tallied and thus there was no confusion

as to the areas designated. Further, having been annexed to the two agreements and referred to in the affidavits, it was part of the evidence.

And, since the area in part C in the sketch layout plan in the first agreement which become part B in the sketch layout plan in the second agreement had been acquired on 14 April 1994, the area acquired on 25 October 1995 must be in part A in the sketch layout plan in the second agreement which was originally parts A and B in the sketch layout plan in the first agreement.

In construing section 13.02 of the second agreement, we must state that since the compensation to be given to the respondent is only for part B in the sketch layout plan to the second agreement, it need not be handed over to the respondents as the acquisition is clearly for part A of the sketch layout plan in the second agreement which should rightly go to the appellant.

Consequently, we allow the appeal with costs here and below and order the refund of the deposit to the appellant.

Appeal allowed.

Reported by David Lai
